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MONTANA LEGISLATIVE HISTORY

Chapter 438 19 95

Bill H 380 S _____ Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Feb 14 ✓ C

Feb 16 ✓ C

_____ C

_____ C

Date Out Feb 17 ✓ C

S. Committee on Judiciary

Hearing Date(s) mar 13 ✓ C

_____ C

_____ C

_____ C

mar 13 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

HB 380 INTRODUCED BY MCKEE, ET AL.
ESTABLISH THE EXTENDED JURISDICTION PROSECUTION ACT

1/30	INTRODUCED		
1/30	FIRST READING		
1/30	REFERRED TO JUDICIARY		
1/31	FISCAL NOTE REQUESTED		
2/06	FISCAL NOTE RECEIVED		
2/06	FISCAL NOTE PRINTED		
2/14	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	97	3
2/21	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
2/27	REVISED FISCAL NOTE RECEIVED		
2/27	REVISED FISCAL NOTE PRINTED		
2/27	FIRST READING		
2/27	REFERRED TO JUDICIARY		
3/13	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/18	2ND READING CONCURRED	46	0
3/20	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	100	0
4/04	3RD READING AMENDMENTS CONCURRED	98	1
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 438		
	EFFECTIVE DATE: 04/14/95		

HB 381 INTRODUCED BY KNOX
AMEND PERMITTING AND ENFORCEMENT PROCEDURES FOR THE METAL
MINE RECLAMATION LAWS
BY REQUEST OF THE DEPARTMENT OF STATE LANDS

1/30	INTRODUCED		
1/30	FIRST READING		
1/30	REFERRED TO NATURAL RESOURCES		
1/31	FISCAL NOTE REQUESTED		
2/06	HEARING		
2/06	FISCAL NOTE RECEIVED		
2/06	FISCAL NOTE PRINTED		
2/09	COMMITTEE REPORT—BILL PASSED		
2/11	2ND READING PASSED	97	0
2/13	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO NATURAL RESOURCES		
3/01	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	49	0
3/14	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/15	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/23	SIGNED BY GOVERNOR		

Loose BILL NO. 380

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE EXTENDED JURISDICTION PROSECUTION ACT; PROVIDING THAT A YOUTH COURT MAY IMPOSE AN ADULT CRIMINAL SENTENCE THAT IS STATED ON CERTAIN CONDITIONS; PROVIDING THAT A YOUTH COURT JUDGE MAY SENTENCE A YOUTH TO A STATE YOUTH CORRECTIONAL FACILITY; PROVIDING THAT A YOUTH COURT JUDGE MAY RETAIN JURISDICTION IN CERTAIN DISPOSITIONS; PROVIDING FOR THE TRANSFER OF A YOUTH COURT CASE TO DISTRICT COURT AFTER DISPOSITION IN YOUTH COURT; AMENDING SECTIONS 41-5-206 AND 41-5-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 5] may be cited as the "Extended Jurisdiction Prosecution Act".

NEW SECTION. Section 2. Extended jurisdiction prosecution defined -- jurisdiction extended. (1)

A youth court case involving a youth alleged to have committed an offense that would be a felony if committed by an adult is an extended jurisdiction prosecution if:

(a) the youth was at least 14 years of age at the time of the alleged offense, the prosecutor requests that the case be designated an extended jurisdiction prosecution, a hearing is held under [section 3], and the court designates the case as an extended jurisdiction prosecution; or

(b) the alleged offense is transferable under 41-5-206 or the youth was at least 12 years of age at the time of the alleged offense and allegedly used a weapon.

(2) To enforce the court's disposition in an extended jurisdiction prosecution, the court shall retain jurisdiction until the case is transferred to district court under [sections 1 through 5] or jurisdiction is terminated under the provisions of 41-5-205.

NEW SECTION. Section 3. Hearing -- court designation. (1) When a prosecutor requests that a case be designated as an extended jurisdiction prosecution under [section 2(1)(a)], the court shall hold a

1 hearing to consider the request.

2 (2) The hearing must be held within 30 days of the filing of the request unless good cause is
3 shown by the prosecutor or the youth that the hearing should be held later, in which case the hearing must
4 be held within 90 days of the request.

5 (3) If the prosecutor shows by clear and convincing evidence that designating the case as an
6 extended jurisdiction prosecution serves public safety, the court may, within 15 days after the hearing,
7 designate the case as an extended jurisdiction prosecution.

8 (4) An order designating a case as an extended jurisdiction prosecution is not appealable until after
9 disposition under [section 4].

10

11 **NEW SECTION. Section 4. Disposition in extended jurisdiction prosecutions.** (1) If a youth in an
12 extended jurisdiction prosecution pleads guilty to or is found guilty of an offense described in [section
13 2(1)(b)], the court shall:

14 (a) impose one or more juvenile dispositions under 41-5-523; and

15 (b) impose an adult criminal sentence, the execution of which must be stayed on the condition that
16 the youth not violate the provisions of the disposition order and not commit a new offense. If the youth
17 violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed
18 as provided in [section 5].

19 (2) Except as provided in subsection (3), if a youth in an extended jurisdiction prosecution is
20 convicted of an offense not described in [section 2(1)(b)], the court shall adjudicate the youth delinquent
21 and order a disposition under 41-5-523.

22 (3) If a youth in an extended jurisdiction prosecution pleads guilty to an offense not described in
23 [section 2(1)(b)], the court may impose, with the youth's consent, a disposition provided under subsection
24 (1)(b). If the youth does not consent to disposition under subsection (1)(b), the court shall impose a
25 disposition as provided under subsection (2).

26

27 **NEW SECTION. Section 5. Execution of adult sentence -- exception -- transfer to district court.** (1)
28 If a court has imposed on a youth an adult criminal sentence stayed under [section 4(1)(b)] and the youth
29 violates the conditions of the stay or is alleged to have committed a new offense, the court may, without
30 notice, direct that the youth be taken into immediate custody and revoke the stay. The court shall notify

1 the youth in writing of the reasons for the revocation.

2 (2) (a) If the youth challenges the reasons for the revocation, the court shall hold a summary hearing
3 at which the youth is entitled to be heard and represented by counsel.

4 (b) After the hearing, if the court finds by a preponderance of the evidence presented that the
5 conditions of the stay have been violated, the court shall:

6 (i) order execution of the sentence imposed under [section 4(1)(b)]; or

7 (ii) continue the stay and make written findings regarding the mitigating factors that justify
8 continuing the stay.

9 (3) If the stay of an adult sentence is revoked under this section, jurisdiction must be transferred
10 to district court for execution of the sentence, subject to 41-5-206(8) and (9).

11
12 **NEW SECTION. Section 6. Transfer to district court after prosecution -- disposition in district court**

13 **-- limitation on jurisdiction.** (1) To ensure continued compliance with the court's disposition under
14 41-5-523, at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age,
15 the youth court judge may transfer jurisdiction to district court and order the department to transfer
16 supervisory responsibility and the youth's case files to the department of corrections and human services.

17 (2) If a youth whose case has been transferred to district court under this section violates a
18 disposition imposed under 41-5-523, the district court may impose conditions as provided under 46-18-201
19 through 46-18-203.

20 (3) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the
21 district court may order that the youth, after reaching 18 years of age:

22 (a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

23 (b) be supervised by the department of corrections and human services.

24 (4) The district court's jurisdiction over a case transferred under this section terminates when the
25 youth reaches age 25 years of age.

26
27 **Section 7. Section 41-5-206, MCA, is amended to read:**

28 **"41-5-206. Transfer to criminal court prior to prosecution.** (1) After a petition has been filed
29 alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its
30 merits, transfer the matter of prosecution to the district court if:

1 (a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be
2 unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503,
3 deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the
4 attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been
5 committed by an adult; or

6 (ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be
7 unlawful and the unlawful act is one or more of the following:

8 (A) negligent homicide as defined in 45-5-104;

9 (B) arson as defined in 45-6-103;

10 (C) aggravated or felony assault as defined in 45-5-202;

11 (D) robbery as defined in 45-5-401;

12 (E) burglary or aggravated burglary as defined in 45-6-204;

13 (F) aggravated kidnapping as defined in 45-5-303;

14 (G) possession of explosives as defined in 45-8-335;

15 (H) criminal sale of dangerous drugs as defined in 45-9-101;

16 (I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

17 (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)
18 through (1)(a)(ii)(I);

19 (b) a hearing on whether the transfer should be made is held in conformity with the rules on a
20 hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court
21 without a jury;

22 (c) notice in writing of the time, place, and purpose of the hearing is given to the youth, ~~his~~ the
23 youth's counsel, and ~~his~~ the youth's parents, guardian, or custodian at least 10 days before the hearing;
24 and

25 (d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe
26 that:

27 (i) the youth committed the delinquent act alleged;

28 (ii) the seriousness of the offense and the protection of the community require treatment of the
29 youth beyond that afforded by juvenile facilities; and

30 (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section. A case may be transferred to district court after prosecution as provided in [section 5] or [section 6].

(6) Upon order of the youth court transferring the case to the district court under subsection (5), the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, the commitment must be to the department of corrections and human services. The department shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 52-5-111; ~~however~~ However, ~~no~~ a youth under

1 16 years of age may not be confined in the state prison.

2 (9) A youth whose case is transferred to district court may not be detained or otherwise placed
3 in a jail or other adult detention facility before final disposition of ~~his~~ the case unless:

4 (a) alternative facilities do not provide adequate security; and

5 (b) the youth is kept in an area that provides physical, as well as sight and sound, separation from
6 adults accused or convicted of criminal offenses."

7

8 **Section 8.** Section 41-5-523, MCA, is amended to read:

9 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**
10 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth
11 in need of supervision, the youth court may enter its judgment making ~~any~~ one or more of the following
12 dispositions:

13 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

14 (b) place the youth on probation;

15 ~~(b)(c)~~ subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state
16 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth
17 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years
18 of age;

19 (d) require the youth to register as a sex offender pursuant to 46-18-254 and 46-23-506;

20 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides
21 for rehabilitation, and protects the public;

22 (f) commit the youth to the department, if the court determines that the youth is in need of
23 placement in other than the youth's own home, provided that In an order committing a youth to the
24 department:

25 (i) the court shall determine whether continuation in the home would be contrary to the welfare
26 of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal
27 of the youth from the youth's home; ~~The court shall include a determination in the order committing the~~
28 ~~youth to the department.~~

29 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile
30 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge

1 finds that the placement is necessary for the protection of the public. The court may order the department
2 to notify the court within 5 working days before the proposed release of a youth from a youth correctional
3 facility. Once a youth is committed to the department for placement in a state youth correctional facility,
4 the department is responsible for determining an appropriate date of release into an appropriate placement.

5 ~~(e)(g)~~ order restitution by the youth or the youth's parents;

6 ~~(d)(h)~~ impose a fine as authorized by law if the violation alleged would constitute a criminal offense
7 if committed by an adult;

8 ~~(e)(i)~~ require the performance of community service;

9 ~~(f)(j)~~ require the youth, the youth's parents or guardians, or the persons having legal custody of
10 the youth to receive counseling services;

11 ~~(g)(k)~~ require the medical and psychological evaluation of the youth, the youth's parents or
12 guardians, or the persons having legal custody of the youth;

13 ~~(h)(l)~~ require the parents, guardians, or other persons having legal custody of the youth to furnish
14 services the court may designate;

15 ~~(i)(m)~~ order further care, treatment, evaluation, or relief that the court considers beneficial to the
16 youth and the community and that does not obligate funding from the department for services outside the
17 state of Montana without the department's approval, except that a youth may not be placed by a youth
18 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to
19 subsection ~~(1)(b)(1)(f)~~, place a youth in a residential treatment facility.

20 ~~(j)(n)~~ commit the youth to a mental health facility if, based upon the testimony of a professional
21 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in
22 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

23 (i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be
24 committed or sentenced to a state youth correctional facility.

25 (ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement ~~by the department~~
26 in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in
27 response to the youth's mental health needs and consistent with the disposition alternatives available in
28 53-21-127.

29 ~~(k)(o)~~ place the youth under home arrest as provided in Title 46, chapter 18, part 10.

30 (2) When a youth is committed to the department, the department shall determine the appropriate

1 placement and rehabilitation program for the youth after considering the recommendations made under
2 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

3 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would
4 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

5 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of
6 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or
7 offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the
8 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

9 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the
10 execution of sentence of adults convicted of crimes.

11 (3) A youth placed ~~by the department~~ in a state youth correctional facility or other facility or
12 program operated by the department or who signs an aftercare agreement under 52-5-126 must be
13 supervised by the department. A youth who is placed in any other placement by the department, the youth
14 court, or the youth court's juvenile probation officer must be supervised by the probation officer of the
15 youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to
16 the department. Supervision by the youth probation officer includes but is not limited to:

17 (a) submitting information and documentation necessary for the person, committee, or team that
18 is making the placement recommendation to determine an appropriate placement for the youth;

19 (b) securing approval for payment of special education costs from the youth's school district of
20 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

21 (c) submitting an application to a facility in which the youth may be placed; and

22 (d) case management of the youth.

23 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time
24 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
25 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of
26 the evaluation, except as provided in subsection (5). A county may contract with the department or other
27 public or private agencies to obtain evaluation services ordered by the court.

28 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of
29 an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order
30 the youth's parents to pay all or part of the cost of the evaluation.

1 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional
2 facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that
3 is transferable to criminal court under 41-5-206.

4 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth
5 is transferred to the district court under 41-5-206, [section 5], or [section 6].

6 (8) An order of the court may be modified at any time. In the case of a youth committed to the
7 department, an order pertaining to the youth may be modified only upon notice to the department and
8 subsequent hearing.

9 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional
10 judgment copies of medical reports, social history material, education records, and any other clinical,
11 predisposition, or other reports and information pertinent to the care and treatment of the youth.

12 (10) If a youth is committed to the department, the court shall examine the financial ability of the
13 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,
14 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health
15 care.

16 (11) If the court determines that the youth's parents or guardians are financially able to pay a
17 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay
18 an amount based on the uniform child support guidelines adopted by the department of social and
19 rehabilitation services pursuant to 40-5-209.

20 (12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each
21 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
22 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
23 nevertheless subject to withholding for the payment of the contribution without need for an amendment
24 of the support order or for any further action by the court.

25 (b) A court-ordered exception from contributions under this section must be in writing and be
26 included in the order. An exception from the immediate income withholding requirement may be granted
27 if the court finds there is:

28 (i) good cause not to require immediate income withholding; or

29 (ii) an alternative arrangement between the department and the person who is ordered to pay
30 contributions.

1 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
2 based upon:

3 (i) a written determination and explanation by the court of the reasons why the implementation of
4 immediate income withholding is not in the best interests of the ~~child~~ youth; and

5 (ii) proof of timely payment of previously ordered support in cases involving modification of
6 contributions ordered under this section.

7 (d) An alternative arrangement must:

8 (i) provide sufficient security to ensure compliance with the arrangement;

9 (ii) be in writing and be signed by a representative of the department and the person required to
10 make contributions; and

11 (iii) if approved by the court, be entered into the record of the proceeding.

12 (13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,
13 the court may modify its order for the payment of contributions required under subsection (11).

14 (14) (a) If the court orders the payment of contributions under this section, the department shall
15 apply to the department of social and rehabilitation services for support enforcement services pursuant to
16 Title IV-D of the Social Security Act.

17 (b) The department of social and rehabilitation services may collect and enforce a contribution order
18 under this section by any means available under law, including the remedies provided for in Title 40,
19 chapter 5, parts 2 and 4."

20
21 **NEW SECTION. Section 9. Codification instruction.** (1) [Sections 1 through 5] are intended to be
22 codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to
23 [sections 1 through 5].

24 (2) [Section 6] is intended to be codified as an integral part of Title 41, chapter 5, part 2, and the
25 provisions of Title 41, chapter 5, part 2, apply to [section 6].

26
27 **NEW SECTION. Section 10. Effective date.** [This act] is effective on passage and approval.

28 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0380, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing the extended jurisdiction prosecution act; providing that a youth court may impose an adult criminal sentence that is stayed on certain conditions; providing that a youth court judge may sentence a youth to a state youth correctional facility; providing that a youth court judge may retain jurisdiction in certain dispositions; and providing for the transfer of a youth court case to district court after disposition in youth court.

ASSUMPTIONS:

1. According to the Board of Crime Control, there are about 500 youth per year who have committed transferrable offenses and could be placed directly in a state youth correctional facility (41-5-523, MCA) by the youth court. This could increase the need for secure bed placements by 40 (from the current 80) at Pine Hills School (PHS) to a total of 120.
2. The Department of Family Services (DFS) will need additional secure detention and community-based facilities.
3. To avoid costs for new construction, some of the 40 additional placements would be served through contracts with local providers.
4. The cost per day at PHS is \$135. This would be the daily cost to serve additional youth.
5. If an additional 40 youth were to be under extended jurisdiction, the annual cost would be about \$1,971,000 (40 X 135 X 365 days).
6. All secure care costs are 100% general fund.
7. Section 41-5-523, MCA, is also amended to allow youth courts to place a youth directly in an in-state residence. DFS is already serving these youth court placements through its foster care budget, but the level of service currently provided to these placements may change with this provision. The department has no way of estimating whether this would increase or decrease costs.
8. This bill would not result in any marked increase in the adult corrections population. The bill may result in a minimal effect on probation and parole caseloads.
9. There will be no additional revenues to the state generated by the bill.

FISCAL IMPACT:

DFS Secure Care

	<u>FY96</u>	<u>FY97</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Operating Costs	1,971,000	1,971,000
<u>Funding:</u>		
General Fund (01)	1,971,000	1,971,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Some impact to county youth probation departments is contemplated because of increased caseload due to extended jurisdiction. Unable to determine impact.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

As stated in assumption #3, it is assumed that many of the additional placements will not be at PHS. If it is necessary to serve the 40 placements at PHS, it would require construction of additional cottages at a cost of about \$1.2 million for a 24-bed unit.

 2-6-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

JEANETTE MCKEE, PRIMARY SPONSOR DATE

Fiscal Note for HB0380, as introduced

HB 380

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0380, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing the extended jurisdiction prosecution act; providing that a youth court may impose an adult criminal sentence that is stayed on certain conditions; providing that a youth court judge may sentence a youth to a state youth correctional facility; providing that a youth court judge may retain jurisdiction in certain dispositions; providing for the transfer of a youth court case to district court after disposition in youth court.

ASSUMPTIONS:

1. Section 8 as amended will prohibit direct placements to a youth correctional facility unless the Department of Family Services (DFS) informs the judge that space is available. This should eliminate the need for additional secure care beds for DFS.
2. Section 8 also was amended to allow youth courts to place a youth directly in an in-state residence after seeking and considering placement recommendations from the youth placement committee.
3. DFS already is serving these youth court placements through its foster care budget, but the level of service currently provided to these placements may change with this provision. The department is unable to project whether this provision will result in a net increase or decrease in costs.
4. Currently, approximately \$6.9 million of the foster care budget is spent each biennium for placements by the youth courts.
5. Program costs and available facilities will remain consistent during the 1997 biennium.
6. There will be no additional revenues to the state generated by this bill.

FISCAL IMPACT:

None.

Dave Lewis 2-22-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Jeanette J. McKee 2/27/95
JEANNETTE MCKEE, PRIMARY SPONSOR DATE

Fiscal Note for HB0380, third reading

HB 380-#2

adult needs not always to be the parent. To approach a stranger would not necessarily promote the health of the teen.

REP. MC CULLOCH referred to the same exhibits which indicated that it would provide the parents with access during the time of pregnancy crisis counseling and asked if there is any reason why they cannot be present now.

Ms. Fraser replied, "Of course not, the mom and dad can be there....."

REP. MC CULLOCH asked Ms. Fraser to address the medical implications of a delay while the decision is being made.

Ms. Fraser said the complicated procedures being set up in the bill would sometimes produce a longer time for the teen to wait before going through with the procedure. Studies have shown that the delay is not just what is indicated in the legislation, but the delay is generally a week or more. Complication rates increase in abortion each week past the 8th week of pregnancy, therefore, medical associations think delays such as this are bad medical policy which may jeopardize the lives of the teens and women they allegedly want to protect.

Closing by Sponsor:

REP. GRIMES said he had the hard statistics which dealt with some of the issues brought up. He said he would make those available to the committee. He closed by saying that parents are the ones financially responsible and he believed that this was an extremely important bill for parental rights.

{Tape: 1; Side: b; Approx. Counter: 31.9}

CHAIRMAN CLARK resumed the chair.

HEARING ON HB 380

Opening Statement by Sponsor:

REP. JEANETTE MC KEE, HD 60, said that the problem of juvenile crime is increasing. According to the uniform crime report for 1990, the number of juvenile arrests in proportion to adult arrests had increase 27% nationwide over the previous decade and 20% more juveniles were behind bars in that time period. She said Montana's youth justice system does not deal effectively with serious criminal acts committed by juveniles. She said HB 380 would seek to toughen the juvenile sentencing laws with changes similar to those implemented in Minnesota. The approach of this legislation would blend the juvenile court with the adult corrections system. She reported that there has been no opposition to that approach from those involved in Montana and it is a part of the Action Plan and has support from the Office of

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/14/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓ <i>late 8:20</i>	✓	
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓ ☺		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith		✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 24
DATE 2/14/95
HB 380

H.B. 380

EXTENDED JURISDICTION

FOR JUVENILE OFFENDERS

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

Section 2. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition -- sentence to correctional facility -- commitment to department -- placement and evaluation of youth -- restrictions. (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making any one or more of the following dispositions:

(a) retain jurisdiction in a disposition provided under subsections (b) and (d).

(b) place the youth on probation;

~~(b)~~ (c) subject to subsections (1)(m)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches age 18. Limitations on release must first be recommended by the Youth Placement Committee. Direct commitment to Pine Hills or other secure facilities are limited to available resources identified by the Department of Family Services.

(d) require the youth to register as a sex offender pursuant to 46-18-254 and 46-23-506.

(e) place the youth in an in-state residence that ensures the youth is accountable, provides for rehabilitation, and protects the public. A sentencing court is limited to available residential spaces identified by the Department of Family Services and recommended by the Youth Placement Committee.

(f) commit the youth to the department, if the court determines that the youth is in need of placement in other than the youth's own home, provided that In an order committing a youth to the department:

...

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2.14.95

BILL NO. HB 380 SPONSOR(S) Rep. McKee

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
<i>John W. Laman</i>	<i>District Judge Ref #3</i>	☒	
<i>Ed McLean</i>	<i>Fourth Judicial District</i>	☒	
<i>BRANDON HOLT</i>	<i>District Judge</i>		☒
<i>Barbara A Monaco</i>	<i>Mont Cath Conf</i>		
<i>G Joe Connell</i>	<i>SOth J.D. Youth Court</i>	☒	
<i>Rich Routier</i>	<i>Judge Frank Davis</i>	☒	
	<i>8th Judicial Dist</i>		
	<i>Youth Ct-Probation Off</i>	☒	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FOR
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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CS-14

Vote: The DO PASS AS AMENDED motion carried 12 - 6; REPS. WYATT, CAREY, HURDLE, SHEA, KOTTEL and MC CULLOCH voted no. (REP. BERGMAN'S proxy vote was not reported at the time of the vote.)

EXECUTIVE ACTION ON HB 380

Motion: REP. MOLNAR MOVED HB 380 DO PASS.

Motion: REP. MOLNAR MOVED TO AMEND HB 380.

Discussion: REP. MOLNAR explained the amendments and his reasons for supporting them.

{Tape: 2; Side: B; Approx. Counter: 50.8; Comments: A copy of the proposed amendments was not given to the secretary.}

REP. KOTTEL said there was no requirement for the youth to register as a sex offender. Section 46-18-254 and 46-23-506 were explained and she said there was no requirement that the youth be found adjudicated having committed any sex offense. She gave suggestions to deal with this problem in the bill.

REP. MOLNAR thought line 11 took care of it.

REP. SOFT had suggested language:

"may require a youth charged and convicted for sex offenses to register as a sex offender."

REP. KOTTEL agreed that it should go in subsection (d) at line 19.

Motion: REP. SOFT MOVED THE SUBSTITUTE AMENDMENT TO INCLUDE THE LANGUAGE REFERRED TO ABOVE.

Discussion: Mr. MacMaster suggested a better way to word and position the intent on line 30 1(0) and strike (d) on line 19:

"If the court finds the youth committed an act that if committed by an adult would have a criminal sex offense, they may require them to register as a sex offender."

This was a friendly amendment to the substitute amendment.

Vote: The motion on the Soft substitute amendment carried unanimously by voice vote.

Vote: The motion on the Molnar amendment passed 15 - 1; REP. HURDLE voted no.

Discussion: There was discussion about rewording the amendment to reflect the connection with the committee bill dealing with

registration of violent and sex offenders between Mr. MacMaster and REP. KOTTEL.

Motion/Vote: REP. TASH MOVED HB 380 DO PASS AS AMENDED. The motion carried 17 - 2; REPS. HURDLE and KOTTEL voted no.

{Tape: 3; Side: A},

EXECUTIVE ACTION ON HB 540

Motion: REP. MOLNAR MOVED HB 540 DO PASS.

Motion/Vote: REP. MOLNAR MOVED TO AMEND HB 540 TO STRIKE SECTIONS 1, 2, 3, AND 4; RESTORE "CONCURRENT" ON LINE 11 OF PAGE 13; SECTION 18 CHANGE "INCLUDE" TO "PRECLUDE" ON LINE 6; AND ITEMS 9 OF EXHIBIT 8; STRIKE THE AMENDED LANGUAGE ON LINE 30 ON PAGE 42; LINE 9, SECTION 7, LINE 12 INSERT "PREVENT AND REDUCE YOUTH DELINQUENCY TO IMMEDIATE, CONSISTENT, ENFORCEABLE AND AVOIDABLE CONSEQUENCES OF THE YOUTH'S ACTION AND A PROGRAM OF SUPERVISION, CARE, REHABILITATION, DETENTION, COMPETENCY DEVELOPMENT, PROTECT THE COMMUNITY"; SECTION 16 1(E), PAGE 20, LINE 6 ADD (E) DETENTION CENTER; PAGE 20 SUBSECTION 3(E), "PLACEMENT MAY BE IN COMMUNITY PROGRAMS BY YOUTH COURT"; ITEMS 10, 11 AND 12 OF EXHIBIT 8. The motion carried 14 - 4; REPS. WYATT, HURDLE, CAREY and KOTTEL voted no. (REPS. GRIMES and AHNER voted aye by proxy.)

Discussion: REP. MOLNAR discussed the proposed amendments item by item.

{Tape: 3; Side: A; Approx. Counter: 4.0; Comments: A copy of the amendments was not given to the secretary.}

Motion: REP. MOLNAR MOVED HB 540 DO PASS AS AMENDED.

Discussion: REP. KOTTEL said it was a significant bill and did not feel comfortable putting it through the system hoping it would all come together. She went through the issues item by item in the bill.

{Tape: 3; Side: A; Approx. Counter: 35.0}

REP. ANDERSON responded to the bill by stating that they could kill the bill in committee whereby they would be left with nothing to work with to solve the problem with youth. Though it might not be perfect, it had a long way to go in the process before it would become law. He suggested that they pass it out of committee and allow it to have the benefit of the process to make the necessary changes.

REP. DIANA WYATT felt that they did have other bills in the process which would address the youth problems. She did not like sending out bills which need to be fixed someplace else in the process and she said they needed to ask if there was really a

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/16/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓ late 8 ¹⁰	✓	
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ late 8 ³⁰	✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

adult needs not always to be the parent. To approach a stranger would not necessarily promote the health of the teen.

REP. MC CULLOCH referred to the same exhibits which indicated that it would provide the parents with access during the time of pregnancy crisis counseling and asked if there is any reason why they cannot be present now.

Ms. Fraser replied, "Of course not, the mom and dad can be there....."

REP. MC CULLOCH asked Ms. Fraser to address the medical implications of a delay while the decision is being made.

Ms. Fraser said the complicated procedures being set up in the bill would sometimes produce a longer time for the teen to wait before going through with the procedure. Studies have shown that the delay is not just what is indicated in the legislation, but the delay is generally a week or more. Complication rates increase in abortion each week past the 8th week of pregnancy, therefore, medical associations think delays such as this are bad medical policy which may jeopardize the lives of the teens and women they allegedly want to protect.

Closing by Sponsor:

REP. GRIMES said he had the hard statistics which dealt with some of the issues brought up. He said he would make those available to the committee. He closed by saying that parents are the ones financially responsible and he believed that this was an extremely important bill for parental rights.

{Tape: 1; Side: b; Approx. Counter: 31.9}

CHAIRMAN CLARK resumed the chair.

HEARING ON HB 380

Opening Statement by Sponsor:

REP. JEANETTE MC KEE, HD 60, said that the problem of juvenile crime is increasing. According to the uniform crime report for 1990, the number of juvenile arrests in proportion to adult arrests had increase 27% nationwide over the previous decade and 20% more juveniles were behind bars in that time period. She said Montana's youth justice system does not deal effectively with serious criminal acts committed by juveniles. She said HB 380 would seek to toughen the juvenile sentencing laws with changes similar to those implemented in Minnesota. The approach of this legislation would blend the juvenile court with the adult corrections system. She reported that there has been no opposition to that approach from those involved in Montana and it is a part of the Action Plan and has support from the Office of

the Governor. She said amendments to be proposed would take care of problems in the fiscal note.

Proponents' Testimony:

Judge John Larson, Fourth Judicial District, said that HB 380 would seek to bring accountability to juvenile justice in Montana. He said that he had seen that there were few options available to the juvenile system in Montana. The sentencing powers were taken away from the juvenile courts in 1987, he said. The options they currently have are determined by DFS except for the local programs.

He had participated in an extensive review of the district court fund, the sources of funding and its distribution, and found that the largest single component of expenditures (well over one-half) from the district court in Montana go for juvenile justice. It is an unfunded mandate which the local governments are assuming. The extended juvenile jurisdiction approach is one which he investigated and took to the Judicial Unification and Finance Commission. The bill was drafted as a result and after consultation with other judges, other legislators and representatives in the field was brought to this session. He provided a comprehensive booklet on the bill for the committee's information. He cited page 14 of the transcript at tab 3 of the booklet as the prevailing view of minors toward our juvenile justice system which is the result of their having no practical consequences for criminal behavior. EXHIBIT 24

He said the underlying concept of extended jurisdiction for sex offenders is to prevent further victimization not only by sex offenders but also by other serious criminals. He quoted from letters of support from other judicial districts expressing their frustration with the current system. These letters and other articles he discussed can be also found in EXHIBIT 24

Ed McLean, District Judge, Missoula and Mineral Counties, endorsed HB 380 for the following reasons:

1. There is a perception in Montana that our juveniles are not held accountable and do not have to respond for their actions. Once they turn 18, the slate is wiped clean and everything is forgotten.
2. Under this legislation, accountability would be brought to the youth to realize that until they make victims of their crimes whole, they will be held by the judicial system and that they will be accountable for their conduct. If a juvenile knows that if they commit an offense and they have to pay for it, it will stop much of the conduct.
3. The bill addressed violent offenders and how long they would have jurisdiction over them which could be extended over a long enough period for prolonged rehabilitation

treatment or incarceration for those who would pose a substantial risk to society.

4. The youth court would still have discretion in handling status offenses as well as youths in need of supervision. This legislation would provide for curbing an individual who might be headed toward a career as a criminal.

Hank Hudson, Director, DFS, said he had worked with the sponsor, Judge Larson and others on this bill and the issues involved. He said it addressed one of the DFS concerns that communication between judges, probation officers and the department needed to be improved by developing discussion between the systems. He felt other concerns would be addressed by the amendments. Those concerns included fiscal accountability as a shared responsibility through a developed constituency. He supported the study being proposed in HB 240.

G. Joe Connell, Chief Probation Officer, 5th Judicial District, was asked to appear as a proponent of HB 380 by his supervisor, Judge Frank Davis.

Barbara Monaco, Chief Juvenile Probation Officer, 20th Judicial District, supported and endorsed HB 380. The main reason for the endorsement was the accountability portion of the bill. She said the current system does not address accountability for the serious juvenile offender. The bill would provide a system for assuring the accountability past the age of 18 and that the victims' needs and community protection would be addressed.

Opponents' Testimony:

None

Informational Testimony:

EXHIBIT 25 was presented as proposed amendments to HB 380.

Questions From Committee Members and Responses:

REP. HURDLE wondered which categories should be included as the most serious juvenile offenses.

Ms. Monaco replied that the serious juvenile offenses are those defined in the Youth Court Act.

REP. SOFT asked how Judge McLean saw the enactment of the bill affecting the crowded conditions at Pine Hills and the "revolving door" situation.

Judge McLean said there has to be a priority set on which youths would be going to Pine Hills. Secondly, some of those youths would be there for a short period of time. A youth who is headed toward a career in crime would be held there for a relatively

long period of time. They would need to prioritize those cases and work with DFS to make appropriate determinations.

REP. SOFT asked for the judge's opinion about how to handle the various categories of juvenile offenders among agencies.

Judge Larson said he believed that once juvenile offenders were past the probation office and into the clerk of the district court by way of a formal petition they should be handled by the same agency for consistency during rehabilitation.

{Tape: 2; Side: A}

REP. KOTTEL asked at what age juveniles could be housed with adults.

Ann Gilke, Staff Attorney, DFS, said there were specific statutes which are very detailed regarding when and what type of a juvenile may be housed in what type of facility. Generally speaking, they may not be housed in a jail at all. There is a 24-hour hold condition during which they cannot be within sight or sound of adults.

REP. KOTTEL asked if the age of 16 was the cutoff for housing them in any unit with an adult.

Ms. Gilke thought that at age 16 the options were increased. Between 12 and 16 the options are very limited.

REP. KOTTEL referred to page 2, line 15 and asked if a youth were convicted of deliberate homicide with a 10- to 20-year sentence, the youth would not serve that sentence, but the judge must stay that sentence on the condition that the youth not violate certain provisions of a disposition order. She asked if this would then set aside the discretion of the judge to impose the sentence.

Judge Larson said there is a regular transfer statute which is unchanged which transfers a youth into adult district court at age 16. This would not make the youth any more eligible to serve in an adult facility but would have to be detained in a juvenile facility. This bill would add an option. Rather than going through the transfer process, which is unworkable because there is always an appeal on the issue of transfer, to stay the adult sentence. It would give the juvenile the time between the commission of the offense and age 18 to perform the juvenile sentence. At age 18, the stay could be lifted and the juvenile then could be placed in any other facility or program available to the corrections department.

REP. KOTTEL re-asked her question.

Judge Larson answered that first the child receives a juvenile sentence, there is an optional adult sentence if the child does not reform under the juvenile sentence and that is stayed. If

there is a violation, it goes back to the judge who then determines whether to lift the stay or to continue with additional conditions.

REP. KOTTEL asked if the child receives as much due process as an adult in terms of a conviction.

Judge Larson answered that when the petition is filed in district court, the youth is given the opportunity to have counsel. If they can't afford counsel, one is appointed for them. Counsel will represent them at every portion of the proceeding just as in adult court. They have the right to a jury trial and all other constitutional rights.

REP. KOTTEL asked if there is as much due process when a juvenile is declared a juvenile in need of supervision as when a juvenile is charged with an adult crime.

Judge Larson responded that a youth in need of supervision also has an appointed counsel, but they wouldn't be subject to any of the issues of this bill.

REP. KOTTEL discussed the portion of the bill dealing with sex offenses on line 19 of page 6 requiring registration.

Judge Larson said a sex offense would not be charged in a youth in need of supervision petition. It would only be an option to the sentencing judge if the youth were declared a delinquent youth in a delinquent youth proceeding and the factors indicated that the youth should be registered both for the youth's treatment and the benefit of the victims. Currently the department takes the view that no youth should register as a sex offender for confidentiality reasons.

REP. KOTTEL asked if the judge then did not support line 16.

Judge Larson supported it for youth who are charged in district court with sex offenses. He said if it needed to be amended to make it more clear, he would support that. It was not a mandate, but an option the judge would have.

REP. KOTTEL asked if 41-5-523, MCA, which talked about a delinquent youth or a youth in need of supervision, is confusing.

Judge Larson said it was confusing and could be clarified to provide that the registration for sex offenders be limited to those who are convicted of sex offenses.

REP. BERGMAN asked for an opinion on the length of stay at Pine Hills School.

Judge McLean said the average stay is eight months. He did not like to see the stay be so short for certain individuals. He said the problem is that everyone who is sent to Pine Hills goes

through a treatment program that is available. He thought the intent of the bill to prioritize the lengths of stay was appropriate to the individual needs. He said he had seen the evaluation program at Mountain View School help to turn kids around.

He said they have adjudication within the disposition. Before getting to the point of adjudication, there must be a finding of guilt. With a finding of guilt, then adjudication occurs and that is where the determination is made whether it is a youth in need of supervision or a delinquent. At the time of the finding of guilt, if it is determined to be a case involving a predatory sex offender, even with a youth in need of supervision, the judge may require registration as a sex offender.

REP. BERGMAN referred to comments about increased communication and asked if they were still left with overcrowding at Pine Hills School.

Judge McLean said that was still a serious problem.

REP. BERGMAN asked if getting more youth detention centers would alleviate any of the problem of Pine Hills being overcrowded.

Judge McLean said the problem was that other current detention centers fall short of the standards which are needed. The cost for regional facilities which would replace Pine Hills seemed to be out of reach.

REP. KOTTEL expressed her concern that a proceeding in a youth court was not technically a criminal trial.

Judge McLean said that was correct.

REP. KOTTEL cited a 1971 court case which concluded that children in youth court proceedings do not have a right to a jury trial.

Judge McLean said that was wrong; that any youth has a right to a jury trial in Montana in a youth court proceedings. He described the process and stated that a youth has every right that an adult has plus others in that the youth has an appointed attorney and that attorney stays with the youth through every stage of the proceedings. If the youth and his parents say they do not want an attorney, that would be the only time an attorney would not appear. The youth is informed that they have the right to remain silent and that they have the right to a jury trial.

REP. KOTTEL and Judge McLean clarified that they were not talking about a youth charged as an adult and that the burden of proof is beyond a reasonable doubt.

REP. AUBYN CURTISS understood that 20% of the DFS budget is spent on probation youths.

Mr. Hudson clarified that it was the foster care budget he referred to which pays for everything from family foster care through therapeutic group homes. Most of them are not in the system because they had been neglected or abused, but because they have been found as youths in need of supervision.

REP. CURTISS asked if they are having to place them in group homes.

Mr. Hudson said that the whole range of foster care placement is considered in the placement decision.

REP. HURDLE asked if it made sense to the sponsor to confine this to violent crimes.

REP. MC KEE deferred the question to Judge Larson.

Judge Larson replied that the bill was defined to cover serious property crimes as well. He referred to the booklet and the testimony of those cases which reflected the attitude of the youth as backup for the scope of the bill going beyond violent crimes.

CHAIRMAN CLARK relinquished the chair to VICE CHAIR ANDERSON.

REP. HURDLE asked if attempted crimes would also be included.

Judge Larson said it could be and the youth court probation officer would make the initial evaluation and there are others involved before a sentence would be imposed.

CHAIRMAN CLARK resumed the chair.

Closing by Sponsor:

REP. MC KEE closed by saying that it is not a confrontational issue between the judges and DFS. The amendment dealt with concerns that DFS has in their limited resources but that they are financially responsible. She reiterated the need for the bill and also said the district judge and probation officer from Ravalli County both offered their support of the bill.

HEARING ON HB 501

Opening Statement by Sponsor:

REP. SHIELL ANDERSON, HD 25, presented HB 501 on behalf of the public school and state institutions as beneficiaries of Montana trust lands. HB 501 would attempt to safeguard the trust lands of Montana from frivolous law suits which cost the state money to defend and cost the beneficiaries cash. It would require that any party seeking to enjoin a revenue-producing activity on state trust lands to post a security bond with the court in order to



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 380 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 6, line 18.

Strike: "i"

Insert: ". A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless the judge has sought and considered release limitations recommended by the youth placement committee."

2. Page 6, line 19.

Strike: "the"

Insert: "a"

Following: "youth"

Insert: "found to be delinquent"

3. Page 6, line 21.

Strike: "i"

Insert: ". Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. The judge may not place the youth in an in-state residence unless the department informs the judge that space is available for the youth at that residence."

-END-

Committee Vote:
Yes 17, No 2.

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DATE 3-13-95

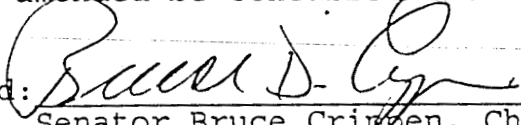
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 13, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 380 (third reading copy -- blue), respectfully report that HB 380 be amended as follows and as so amended be concurred in.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 3, line 27.
Following: "reaches"
Strike: "age"

2. Page 6, lines 22 and 23.
Following: "UNLESS" on line 22
Strike: remainder of line 22 through "LIMITATIONS" on line 23

3. Page 7, line 1.
Strike: "SPACE IS"
Insert: "resources are"
Following: "FOR"
Insert: "placement of"

4. Page 7, line 5.
Following: second "the"
Insert: "youth's own"

-END-

 Amd. Coord.
Sec. of Senate

Sen. Grosfield
Senator Carrying Bill

581407SC.SRF

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3-13-95 BILL NO. HB 380 NUMBER 1

MOTION: Sen. Bartlett moved to amend P. 6, L. 22.

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	/	
LARRY BAER		/
SUE BARTLETT	/	
AL BISHOP, VICE CHAIRMAN		
STEVE DOHERTY		
SHARON ESTRADA		/
LORENTS GROSFIELD		
MIKE HALLIGAN	/	
RIC HOLDEN		/
REINY JABS		/
LINDA NELSON	/	

SEN:1995
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MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3-13-95 BILL NO. HB 380 NUMBER 2

MOTION: Sen. Bartlett moved to amend P. 6, Line 22

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	/	
LARRY BAER		/
SUE BARTLETT	/	
AL BISHOP, VICE CHAIRMAN		
STEVE DOHERTY		
SHARON ESTRADA		/
LORENTS GROSFIELD	/	
MIKE HALLIGAN	/	th
RIC HOLDEN		/
REINY JABS		/
LINDA NELSON	/	

SEN:1995
wp:rlclvote.man

5 4

Carried

juvenile crime of any kind. HB 540 does that, he said. The bill would replace pro-activity, and he objected to it. He said there was a time lag between the study--action--see if it works--change it--try to get it to work again. By then the things first studied have changed again. **CHAIRMAN CRIPPEN** asked the sponsor if he considered the other bills inconsistent with **REPRESENTATIVE MOLNAR'S** bill. **REPRESENTATIVE SOFT** said he appreciated **REPRESENTATIVE MOLNAR'S** frustration. He said in the field of working with mental health and juvenile delinquency, things take time. He disagreed that the bill was a placebo. He said there were other bills that were "immediate action" action steps. **CHAIRMAN CRIPPEN** said the committee could serve as an oversight committee on future legislation and the combination of the bills proposed.

Closing by Sponsor:

REPRESENTATIVE SOFT pointed out Page 4 of the bill, which recommended a continuum that provided for community protection, youth accountability, youth competency, meaningful restitution, and successful reintegration of youth into the community. He said if they were just going to get the kids' attention, send them to Pine Hills for three months and let them back into the system again, they might well indeed end up in the prison system, as **REPRESENTATIVE MOLNAR** had suggested. The money in the fiscal note to start the study was not taxpayers' dollars, he said, but rather it was federal dollars.

HEARING ON HB 380

Opening Statement by Sponsor:

REPRESENTATIVE JEANETTE MCKEE, House District 60, Hamilton and Corvallis, sponsored HB 380. She stated that the youth justice system did not deal effectively with serious criminal acts committed by juveniles. HB 380, the extended juvenile prosecution act, seeks to toughen the juvenile sentencing laws with changes similar to those implemented in Minnesota. Like Montana, they were not having much success in deterring or addressing serious juvenile crime. The approach detailed in HB 380 blends the juvenile court with the adult correctional system. There has been no opposition from any people involved in the issue in Montana. HB 380 proposes: 1) Serious violent offenses would be subject to two sentences (one would be a youth court sentence, and the second is an adult sentence which is stayed pending performance of the youth sentence). This dual sentence provides community protection, accountability, and an incentive to follow the law. If the youth gets in trouble again or fails to follow through on the sentence, the judge can lift the stay and implement the sentence when the youth reaches 18. 2) In less serious cases, the sentencing judge retains jurisdiction to transfer to the Department of Corrections at any time after age 18 until age 25 to ensure compliance with restitution, treatment and educational requirements of the youth court sentence.

3) District Judges can require notification and their approval before the serious youthful offender is returned from Pine Hills. No objections to this limitation being recommended first by the youth placement committee. This message of "crime pays" is not the one that people had elected them to send, she said. 4) Judges' sentencing powers are restored for in-state placements to allow more community placements designed for the individual needs of the child and their families. Judges are accountable to their communities for the success of these programs. The Department of Family Services is not. If these local efforts are unsuccessful, the sentencing judge retains jurisdiction to implement more structure, including the wilderness camp or Pine Hills. As part of the sentence involving sex offenses, the youth may also be required by the court to register as a sex offender. Currently youth are not required to register if they commit a sex offense nor is there any state program available to treat juvenile sex offenders. These changes will put more teeth into the system. Youth will quickly appreciate that violence will be met with immediate sanctions. Seventeen will no longer be a safe age to commit serious or violent crimes because punishment will continue after age 18.

Proponents' Testimony:

Judge John W. Larson, District Judge, Fourth Judicial District, supported HB 380. He presented a packet (EXHIBIT 3 - previously mentioned in HB 240) for the committee that detailed some of the articles and observations that REPRESENTATIVE SOFT made about the general condition of the juvenile justice system. There are specific statistics from Missoula County that demonstrate the rise of violent crime. There is a transcript (Tab 3) from Hill County of a case before Judge Warner, demonstrating the general view on the street of the juvenile justice system in Montana and the level of unworkability that is there. A young lady had written \$8,000 worth of bad checks. She assumed that since she was a minor, nothing would happen. He related some experiences he had been involved in just the previous week. One was a young man 13 years old who was filling Christmas tree bulbs with stain to make bombs. A 14-year-old juvenile sex offender in Mineral County, tried, through his attorneys to plead down a case to keep it confidential, but the judge kept jurisdiction through age 21 and required community service and treatment. He also heard a case in which a youth had turned over thousands and thousands of dollars worth of tombstones in Missoula who recently was brought to court on another charge of burglary including stealing weapons. A young woman was brought before him for stealing a car. He said the rash of serious crime has to be dealt with immediately. The bill would have an immediate effective date, he said, and would send a message to the juveniles that failure to perform the youth court sentence would mean the adult sentence would kick in automatically without further victimization. It would send a strong message to youth that think seventeen is a free age when they can do anything without accountability. It also has a provision for the registration of sex offenders

because the treatment is needed. The bill has widespread support, he said, pointing to the House vote of 99-0. He urged concurrence.

Dennis Paxinos, Yellowstone County Attorney, also spoke on behalf of the Montana County Attorneys Association. He urged the committee to concur on the bill, which was long overdue. He said it was very difficult to explain to the victims of violent crime that not very much was going to happen to the perpetrator. It was also frustrating to realize that Pine Hills was operating ineffectively because of the fact that the legislature had their heads in the sand in understanding what institutions cost. As it stands now, if they sent someone to Pine Hills, they might be there for 30 days. He said it was a badge of courage for these punks when they came back. HB 380 would allow them to deal with individuals as adults when they reach adult age if they do not perform as the judge instructed as juveniles. It is a minor change that could be made immediately to the Youth Court Act, he said.

Hank Hudson, Director, Department of Family Services spoke as a proponent. He said his department had an opportunity to work with the sponsor and others involved in the bill. He said over the years the judges felt they had no input into the decisions with kids and that DFS took over. It was determined to work with judges to ensure an on-going involvement in the cases. On the other side, total sentencing authority could not be handed over entirely to judges because they don't bear the responsibility for paying for incarceration, for instance, to Pine Hills. So the responsibility was separated to operate the system within the resources given to the department. The pendulum had swung over to the people who were responsible for the budget to make sure the corrections money was not overspent, which had left the judges out of the loop. This bill would reflect a compromise that says, "judges will have more authority, more involvement in the sentence of the youth, but in a working relationship with the department to consider what resources are available." He said it was somewhat of an experiment and a dramatic change. He thought they could make it work effectively, although there was a problem in Pine Hills School because of the number of youth sent there and the physical limitations of the facility demanded that youth were being sent out too soon. He said a good number of kids would be there until they were 18. He said steps had been taken to more than double the youths staying in the Mountain View School and more than doubled the length of time they would stay. They were seeking relief from the revolving door problems at Pine Hills during this biennium, he said. The institutional secure care needs of the state needed to be looked at in his estimation because it had been a while since they had studied those issues. He was concerned about a problem with the bill on Pages 6 and 7. Part e. stated, "place the youth in an in-state residence that assures the youth is accountable provides for rehabilitation and protects the public. Before placement, the sentencing judge shall seek and consider recommendations from the youth placement

committee. The judge may not place the youth in an in-state residence unless the department informs the judge that space is available for the youth at that residence." On Page 7, he suggested the word, "resources," instead of, "space." He said they had more space than they could pay to have kids in. The bill would encourage the judge and the department to make decisions within the fiscal reality of the state.

Candy Wimmer, Youth Justice Council, spoke in favor of HB 380. They had worked with Judge Larson on the bill. They believed in the accountability the bill offered to youth who are reaching majority and who have not filled the disposition of their youth court sentencing. She urged support for the measure.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR BAER asked for an explanation of the fiscal note. He said it pointed to a total cost to the state of \$50,000 for each person institutionalized. He also wanted to know if the numbers changed when they placed youth in places other than Pine Hills? Hank Hudson said it cost about \$135 per day to keep a youth in Pine Hills, which was the most expensive level of care, but was consistent with national averages. There was a wide range of places youth may be placed, he said, with non-secure shelter care being the least expensive. Family foster care was \$11 per day. REPRESENTATIVE MOLNAR also fielded the question. He stated that the DFS charges the State of Montana \$135 per day, per kid, at Pine Hills. Full security for women costs \$80 per day. Full security for men is \$40 per day. To place a youth in a situation like REPRESENTATIVE SOFT'S facility would run around \$1,400 per week. A child in the Deaconess Psychiatric Center would cost the state \$1,000 per day. Foster care charges were \$11 per day and therapeutic foster care would cost \$48 per day. SENATOR REINY JABS asked Judge Larson about the frustration of judges, if no space were available for youths. Judge Larson responded that it was frustrating, but that for now, judges were not even in the loop. He said he had no dispute with the director about changing the network of resources, but the judges did want a say in the proceedings. Now, he said, when a youth came into court and was sentenced to Family Services, he did not know where the youth went, when he came back or had any further contact. He said the judge would get from HB 150 the same two recommendations that the regional DFS director gets. They would both sit down and look at the resources available and choose one in a partnership between the executive and judiciary, rather than letting money drive the whole show. He said they could be accountable to the community and also have some say in the type of treatment youths received. SENATOR HALLIGAN questioned Page 2, Line 8 on the extended jurisdiction and why it would only be a public safety focus at

that hearing rather than the danger to the youth himself and others? **Judge Larson** said it came from the Minnesota approach which gives a lower threshold for transfer. It would not take much of a showing to get them into an extended jurisdiction level. Now, he said, they had a transfer process, but it was never used because there were so many factual determinations that had to be made, subject to appeal. The youth would sit in a detention center for a year pending appeal. He said it was an ineffective portion of the statute. It would be easy to get a person into an extended jurisdiction proceeding, he said, but the more important part is where the youth violates that extended jurisdiction stay and comes back before the judge. Then the judge can look at all those things, determining if it was a minor or a serious violation before lifting or modifying the stay to kick in the adult sentence. He said it would send a message to the youth that if they were going to be in the extended jurisdiction situation, they would have to perform. **SENATOR HALLIGAN** stated that he had represented a youth in an assault with a car, first offense. How would they show that there was no pattern of conduct and no public safety issue, when homicide was the same situation although more serious. He said it appeared to be a lower threshold to begin with but there may be first-time offenders with minor ungovernable problems that may not be in the system or consent decreed that may not give the public a safety threshold. He asked if he were convinced of that. **Judge Larson** said it was better sometimes to have more youth in court. He said they had 652 first-time offenders in Missoula. At the same time, they had 1,500 re-offenses before the same youth court probation officers and possibly 500-600 minors in possession, which they had diverted to municipal and justice courts. They diverted them to encourage the youth to be in court with their parents and understand it was serious. He stated that families should work together on these problems from the beginning. The most violent people he'd sentenced as adults committing the most horrendous crimes were those with 6 or 8 or 10 juvenile run-ins, but never got into court until the 9th or 10th time. He said it was a change in philosophy, but one he recommended. **SENATOR NELSON** asked the sponsor about two different fiscal notes received, noting a vast difference between them. **REPRESENTATIVE McKEE** stated that the first fiscal note was estimated before the amendment. When the DFS determined the realities in recommending the options available within their resources, she had signed the second fiscal note, which denotes no fiscal impact. **SENATOR BARTLETT** noted that in the execution of adult sentence portion of the bill, it talked about an adult criminal sentence stayed under Section 4 if the youth violates the conditions or is alleged to have committed a new offense. She asked if it could be any type of offense, since no limitation was listed. **Judge Larson** said the law was broadly written and she was correct. The discretion would lie with the judge, then, to evaluate whether the state would only be modified, will be re-instituted without modification or will be lifted. They will look at specific circumstances. It is intended that there is a consequence to

these youth for every violation that occurs, and be back in front of the judge.

Closing by Sponsor:

REPRESENTATIVE MCKEE was appreciative of the opportunity to work out the problems of the bill beforehand to resolve the difficulties and the fiscal note. She said the cooperation of the department and the judiciary was commendable. She quoted from Judge Larson's handout in which the young lady who was arrested for bad checks said, "my friends started telling me that I couldn't get in that much trouble because I was a minor." So the attorney said, "So, as a kid, you thought you could do almost anything, right?" She replied, "yeah." The attorney asked her if now she knew better. She said, "I mean, I thought the only reason you could get into trouble, if you're a kid, is if you kill someone." HB 380 would provide a middle ground for those problems that utilize the best features from both the juvenile and adult systems. It would grant youthful significant incentives to reform while retaining much-needed flexibility in the system to effectively deal with those offenders who do not. It does put some teeth into the system, she said. She urged their consideration.

HEARING ON HB 429

Opening Statement by Sponsor:

REPRESENTATIVE BRAD MOLNAR, House District 22, Laurel, sponsored HB 429. This bill would attempt to give consequences to youth for their actions, he said, particularly social pressure. Currently, if a youth is charged, the newspaper cannot print who they are, or if they had been charged in the past. Under current law, they can report it as a felony, but they don't. If they do report the crime as a felony, and then it is plead down to a misdemeanor, the newspaper is in more trouble than the kid is because misdemeanors are held to be quiet. Youth in need of supervision is totally confidential. This bill would change some of that. In the case of youth in need of supervision, it would make public the part concerning the youth. What often happens, he said, is the lawyer would maneuver the case until it was no longer the question of, "did you steal the car," or "did you steal and sell drugs," or "did you beat your parents to a pulp," but rather the affidavit would say, "the father abused the child physically," or "the mother did it emotionally and sexually," or "the grandmother starved the kid half to death." It leaves the kid looking at the parents, saying, "drop the charges, back off on this thing, or you are in more trouble than I am." Of course, with that information in the newspapers, the parents would be devastated. He said that through an amendment on the House side, they added that any report, charge or allegation that is not adjudicated pursuant to this chapter, is also held quiet. The pro-active bill would also provide for the notification of victims in juvenile crimes. The victims would know what is going

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 3-13-95

FILE NO. HB 240, HB 380

H.B. 380

EXTENDED JURISDICTION

FOR JUVENILE OFFENDERS

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

DATE 3-13-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB150, HB240, HB380, HB429
HB410

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Check One

Name	Representing	Bill No.	Support	Oppose
John W. Larkin	District Judge Fourth District	150 380 240 429	✓	
John De Witt	DJS - Juvenile Court	150	✓	
Charles Black	MT News-Papers	429	✓	
Beth Baker	Dept of Justice	240	✓	
Dorothy Smith	Common Cause	410	✓	
Patrick A. Chénovick	MT SUPREME CT	240	✓	
Jim Jensen	MEIC	410		✓
Sharon Hoff	MT CATH CONF	240	✓	
Lauree Karkuk	Christian Coalition of MT	240	✓	
Gene Kiser	MBCC	240	✓	
Candy Wimmer	Youth Justice Council	240	✓	
" "	" "	380	✓	
Howard Gipe	Flathead Co.	240	✓	
Dennis Paxinos	Yllwsthe Co & MT Co Attys Assoc	410	✓	

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BILLS BEING HEARD TODAY: _____

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Check One

Name	Representing	Bill No.	Support	Oppose
Mary Alice Cook	adv. for MT's children	150 340 380 429	✓	
David Owen	MT chamber	243 470	✓	
Margaret Mary-Schwinder	WIFE	←		→

VISITOR REGISTER

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